



DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 224

[212D0102DR/DS5A300000/DR.5A311.IA000118]

RIN 1076-AF65

Tribal Energy Resource Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is confirming the interim final rule published on May 24, 2021, updating regulations governing Tribal Energy Resource Agreements (TERAs) between the Secretary of the Interior (Secretary) and Indian Tribes. The interim final rule added the statutory requirement that that any application for a Tribal Energy Development Organization (TEDO) be submitted by the Tribe and corrected cross-references.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273-4680; elizabeth.appel@bia.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of Rule

This final rule updates TERA regulations that BIA published on December 18, 2019 (84 FR 69602), under the authority of the Indian Tribal Energy Development and Self-Determination Act of 2005, as amended by the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, 25 U.S.C. 3501-3504, Pub. L. 115-

325, and 25 U.S.C. 2 and 9. The rule addressed the requirements of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (2017 Amendments), including establishing a process and criteria for TEDOs to obtain certification from the Secretary so that they may enter into leases, business agreements, and rights-of-way with Tribes on Tribal land without Secretarial approval. *See* Section 103(b) of the 2017 Amendments.

The 2019 regulation stated at § 224.202 that a TEDO must submit an application. The statute, however, states that the Tribe submits the application for certification of a TEDO. *See* 25 U.S.C. 3504(h)(1). This final rule corrects the regulation at § 224.202 to provide that a Tribe must submit the application.

This final rule also corrects typographical errors in the cross-references to paragraphs in § 224.53, as follows:

- In paragraph (a)(3), the cross-reference is corrected to be paragraph (b), rather than paragraph (c);
- In paragraph (a)(5), the cross-reference is corrected to be paragraph (c) rather than paragraph (d); and
- In paragraph (b), the cross reference is corrected to be paragraph (a)(3) rather than paragraph (a)(6).

On May 24, 2021 (86 FR 27806), BIA published an interim final rule making these changes and announced the opportunity to comment by June 23, 2021. BIA received no comments on the interim final rule, so this final rule adopts the interim final rule as published without change.

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule makes minor corrections.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a monetarily significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because the rule affects only agreements entered into by Tribes and the Department. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the

criteria in Executive Order 13175 and have determined that it does not have substantial direct effects on federally recognized Indian Tribes because the Department consulted on substantive requirements of the rule that is in effect, and this rule merely makes minor corrections to that substantive rule.

I. Paperwork Reduction Act

OMB Control No. 1076-0167 currently authorizes the collections of information contained in 25 CFR part 224. This rule does not affect those collections of information.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 224

Agreement, Appeals, Application, Business agreements, Energy development, Interested party, Lease, Reporting and recordkeeping requirements, Right-of-way, Tribal Energy Resource Agreements, Tribal capacity, Tribal lands, Trust, Trust asset.

PART 224—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT

The interim final rule amending 25 CFR part 224 which was published at 86 FR 27806 on May 24, 2021, is adopted as final without change.

Bryan Newland,

Principal Deputy Assistant Secretary – Indian Affairs.

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